

Message Text

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SUBJ: SEC ACTION AGAINST AIC

REF: STATE 304896

THE FOLLOWING IS THE EMBASSY'S INFORMAL TRANSLATION OF AN EDITORIAL, ENTITLED "A PROBLEMATIC LETTER OF CREDIT," WHICH APPEARED IN THE JAN 8, 1976, EDITION OF THE INFLUENTIAL NEUE ZURCHER ZEITUNG.

BEGIN QUOTE: IN THE LEGAL DISPUTE BETWEEN THE AMERICAN SECURITIES AND EXCHANGE COMMISSION (SEC) AND THE SWISS CREDIT BANK (SCB) AN IMPORTANT PRELIMINARY DECISION HAS BEEN MADE. THE BANK HAS AGREED TO DEPOSIT A LETTER OF

CREDIT IN THE USA IN THE AMOUNT OF APPROXIMATELY \$122 MILLION REPRESENTING THE DISPUTED INVESTMENTS (CF. NZZ OF JAN 7). THIS LETTER OF CREDIT IS TO COVER ANY CLAIMS MADE BY AMERICAN INVESTORS ON SEVERAL FINANCE COMPANIES WHICH ARE DOMICILED IN LIECHTENSTEIN AND WHICH, ACCORDING TO THE SEC, DO NOT OPERATE IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES. THE SCB WAS DRAWN INTO THIS WHIRLPOOL OF AN AFFAIR BECAUSE - LIKE SOME OTHER SWISS BANKS - IT HELD ACCOUNTS AND DEPOSITS FOR SOME OF THESE COMPANIES.

IN ISSUING THE LETTER OF CREDIT THE SCB HAS NOT BEEN ABLE TO FEND OFF THE FRONTAL ATTACK BY THE AMERICAN LEGAL AUTHORITIES. EVEN THOUGH THE ABOVE MENTIONED

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\$122 MILLION FOR THE TIME BEING SERVES ONLY TO COVER

POTENTIAL CLAIMS, IT IS NOT IMPOSSIBLE THAT THESE CLAIMS MAY BE MADE FOR LESSER OR GREATER AMOUNTS. BUT THIS COMPROMISE MAKES IT POSSIBLE TO REFUSE THE AMERICAN DEMAND FOR THE TRANSFER OF THE ASSETS OF CERTAIN CLIENTS TO NEW YORK - WHICH WOULD HAVE BEEN AGAINST THE LAWS OF OUR COUNTRY - AS WELL AS THE BLOCKING OF FUNDS IN THE AMERICAN SUBSIDIARY (OF THE SCB). THUS THE BANK HAS PROBABLY MADE THE BEST OF THE SITUATION INTO WHICH IT WAS FORCED BY CONFLICTING JUDGEMENTS OF LAW COURTS AND IN PARTICULAR BY THE OVERPOWERING FORCE OF THE AMERICAN LEGAL AUTHORITIES. BUT THE CIVIL ACCUSATION OF THE SEC AGAINST THE SCB AND OTHERS IS STILL PENDING.

THIS PRELIMINARY JUDGMENT IS ALSO IMPORTANT BECAUSE THE ATTACK BY THE SEC IN ONLY PART OF A LARGER CONTEXT -- I.E., THE TENDENCY TO MAKE AMERICAN LAW APPLICABLE OUTSIDE THE UNITED STATES. OTHER BRANCHES OF THE ECONOMY HAVE THEIR TALES TO TELL ABOUT THAT PROBLEM. THE SCB IS OPERATING ON THE ASSUMPTION THAT NOT ONLY IS THE SCB SUBJECT TO JUDICIAL PROCEEDINGS IN THE U S BUT THAT ALL OF ITS SWISS ACTIVITIES ARE ALSO CONTROLLED BY AMERICAN LAW. NATURALLY, FROM THE SWISS POINT OF VIEW, THIS IS NOT ACCEPTABLE. BUT IT REPRESENTS A REALITY WITH WHICH WE MUST RECKON: THE AMERICAN AUTHORITIES HAVE THE MEANS TO PRESSURE THE NEW YORK SUBSIDIARY WHICH THE HEAD OFFICE IN ZURICH CANNOT IGNORE WHATEVER THE LEGAL SITUATION.

THE SCB EMPHATICALLY DENIES THAT IT HAS IN ANY WAY ACTED AGAINST AMERICAN LAW AND UNTIL A LEGAL DECISION IS MADE THERE IS NO REASON TO DOUBT THESE AFFIRMATIONS. AT BEST IT MIGHT BE REPROACHED FOR NOT HAVING BEEN MORE CAREFUL IN CHOOSING ITS BUSINESS PARTNERS - PARTICULARLY IN VIEW OF THE NEW YORK SUBSIDIARY. BUT EVEN IF THERE SHOULD BE A GRAIN OF TRUTH IN THAT, THE ARGUMENT DOES NOT HOLD; AS FAR AS THE SEC IS CONCERNED, ALMOST ANYONE WHO HAS ANY BUSINESS DEALINGS WITH THE UNITED STATES IS SUBJECT TO AMERICAN LAW. THIS MAKES IT ALL THE MORE IMPORTANT THAT NO DOUBTS ARISE REGARDING THE WAY THESE LAWS ARE APPLIED; AND THEY SHOULD NOT BE UNCLASSIFIED

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APPLIED EXTRATERRITORIALLY. SHOULD THIS HAPPEN, AMERICA WOULD DO HARM NOT ONLY TO ITS FOREIGN BUSINESS PARTNERS, BUT ALSO TO ITSELF. END QUOTE.
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